

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1632 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHANUPRASAD CHIMANBHAI SUTHAR

Versus

LATABEN D/O. CHIMANBHAI M GAJJAR

Appearance:

MR HM PARIKH for Petitioner

MR NS SHETH for Respondent No. 1

MS. VALIKARIMVALA, ADDL. PUBLIC PROSECUTOR for
Respondent No. 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 23/04/96

ORAL JUDGEMENT

Rule. Mr M.S. Sheth appears and waives service of Rule for respondent no.1 and Ms Valikarimvala waives service of Rule for respondent no.2.

2 The present Special Criminal Application requires a partial recognition. Respondent no.1-Smt. Lataben Gajjar had instituted maintenance proceedings before the learned JMFC, Nadiad, by filing Misc. Criminal Application No.446 of 1994. The husband who happened to be the petitioner before me had appeared before the said Court and had solicited the services of a learned advocate also. Anyhow, when the matter had reached for hearing, the husband was found not to be present. In the same way, the learned advocate who used to represent the cause of the husband was also found not to be present. In this view of the matter, the learned trial Magistrate has awarded the maintenance at the rate of Rs.500 per month to the applicant-wife effective from the date of the application. The said orders are in challenge before me.

3 After some debate, learned counsel for the petitioner, Mr H.M. Parikh, is agreeable to a proposition that the matter be remanded to the Court below for a fresh hearing. Learned counsel is candid in saying that during the period in which the final orders could be passed the petitioner-husband shall continue to pay an amount of Rs.500 per month to the wife as the interim maintenance. There was some hesitation on the part of the learned counsel Mr Sheth who appears on behalf of the respondent-wife. Ultimately it appears that his client also would be satisfied provided some cost is awarded to her. This approach appears to be inevitable because, as it is clear from the orders under challenge neither the husband nor the learned advocate was present when the matter came to be decided and disposed of.

4 This petition requires to be allowed in part. It is partly allowed. The orders under challenge are quashed and set aside and the matter is remanded back to the learned trial Magistrate with a direction to decide it afresh after affording reasonable opportunity of being heard to the parties and of adducing evidence by them oral as well as documentary. The learned trial Magistrate should perform this exercise as expeditiously as possible and within a period of six months from the date of the receipt of this order. During this period the petitioner-husband shall continue to pay an amount of Rs.500 per month to the respondent-wife as the interim maintenance. The petitioner-husband also shall pay an amount of Rs.750 as the costs to the respondent no.1-wife. Rule is made absolute accordingly.